

ASSEMBLY BILL

No. 2095

Introduced by Assembly Member Wagner

February 20, 2014

An act to amend Section 226 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2095, as introduced, Wagner. Employee compensation: itemized statements.

Existing law requires every employer, semimonthly or at the time of each payment of wages, to furnish each employee with an accurate itemized statement in writing showing specified information. Existing law requires an employer to afford current and former employees the right to inspect or copy records pertaining to their employment, as specified.

Existing law authorizes an employee to bring an action for injunctive relief to ensure compliance with these requirements, and provides that this employee is entitled to an award of costs and reasonable attorney's fees.

This bill would prohibit an employee from receiving an award of costs and reasonable attorney's fees if the employer is the prevailing party and the court determines that the action was brought in bad faith, in which case the bill would require the employer to be awarded attorney's fees and costs.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 226 of the Labor Code is amended to read:

226. (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

1 (b) An employer that is required by this code or any regulation
2 adopted pursuant to this code to keep the information required by
3 subdivision (a) shall afford current and former employees the right
4 to inspect or copy records pertaining to their employment, upon
5 reasonable request to the employer. The employer may take
6 reasonable steps to ensure the identity of a current or former
7 employee. If the employer provides copies of the records, the actual
8 cost of reproduction may be charged to the current or former
9 employee.

10 (c) An employer who receives a written or oral request to inspect
11 or copy records pursuant to subdivision (b) pertaining to a current
12 or former employee shall comply with the request as soon as
13 practicable, but no later than 21 calendar days from the date of the
14 request. A violation of this subdivision is an infraction.
15 Impossibility of performance, not caused by or a result of a
16 violation of law, shall be an affirmative defense for an employer
17 in any action alleging a violation of this subdivision. An employer
18 may designate the person to whom a request under this subdivision
19 will be made.

20 (d) This section does not apply to any employer of any person
21 employed by the owner or occupant of a residential dwelling whose
22 duties are incidental to the ownership, maintenance, or use of the
23 dwelling, including the care and supervision of children, or whose
24 duties are personal and not in the course of the trade, business,
25 profession, or occupation of the owner or occupant.

26 (e) (1) An employee suffering injury as a result of a knowing
27 and intentional failure by an employer to comply with subdivision
28 (a) is entitled to recover the greater of all actual damages or fifty
29 dollars (\$50) for the initial pay period in which a violation occurs
30 and one hundred dollars (\$100) per employee for each violation
31 in a subsequent pay period, not to exceed an aggregate penalty of
32 four thousand dollars (\$4,000), and is entitled to an award of costs
33 and reasonable attorney's fees.

34 (2) (A) An employee is deemed to suffer injury for purposes
35 of this subdivision if the employer fails to provide a wage
36 statement.

37 (B) An employee is deemed to suffer injury for purposes of this
38 subdivision if the employer fails to provide accurate and complete
39 information as required by any one or more of items (1) to (9),
40 inclusive, of subdivision (a) and the employee cannot promptly

1 and easily determine from the wage statement alone one or more
2 of the following:

3 (i) The amount of the gross wages or net wages paid to the
4 employee during the pay period or any of the other information
5 required to be provided on the itemized wage statement pursuant
6 to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

7 (ii) Which deductions the employer made from gross wages to
8 determine the net wages paid to the employee during the pay
9 period. Nothing in this subdivision alters the ability of the employer
10 to aggregate deductions consistent with the requirements of item
11 (4) of subdivision (a).

12 (iii) The name and address of the employer and, if the employer
13 is a farm labor contractor, as defined in subdivision (b) of Section
14 1682, the name and address of the legal entity that secured the
15 services of the employer during the pay period.

16 (iv) The name of the employee and only the last four digits of
17 his or her social security number or an employee identification
18 number other than a social security number.

19 (C) For purposes of this paragraph, “promptly and easily
20 determine” means a reasonable person would be able to readily
21 ascertain the information without reference to other documents or
22 information.

23 (3) For purposes of this subdivision, a “knowing and intentional
24 failure” does not include an isolated and unintentional payroll error
25 due to a clerical or inadvertent mistake. In reviewing for
26 compliance with this section, the factfinder may consider as a
27 relevant factor whether the employer, prior to an alleged violation,
28 has adopted and is in compliance with a set of policies, procedures,
29 and practices that fully comply with this section.

30 (f) A failure by an employer to permit a current or former
31 employee to inspect or copy records within the time set forth in
32 subdivision (c) entitles the current or former employee or the Labor
33 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
34 penalty from the employer.

35 (g) The listing by an employer of the name and address of the
36 legal entity that secured the services of the employer in the itemized
37 statement required by subdivision (a) shall not create any liability
38 on the part of that legal entity.

39 (h) An employee may also bring an action for injunctive relief
40 to ensure compliance with this ~~section~~, and *section*. *An employee*

1 *who brings this action* is entitled to an award of costs and
2 reasonable attorney's fees, *unless the employer is the prevailing*
3 *party and the court determines that the action was brought in bad*
4 *faith, in which case the employer shall be awarded reasonable*
5 *attorney's fees and costs.*

6 (i) This section does not apply to the state, to any city, county,
7 city and county, district, or to any other governmental entity, except
8 that if the state or a city, county, city and county, district, or other
9 governmental entity furnishes its employees with a check, draft,
10 or voucher paying the employee's wages, the state or a city, county,
11 city and county, district, or other governmental entity shall use no
12 more than the last four digits of the employee's social security
13 number or shall use an employee identification number other than
14 the social security number on the itemized statement provided with
15 the check, draft, or voucher.